

MT LEGISLATIVE HISTORY

Chapter 185 1983

Bill H 452 S _____

Original bill & hist. C

H. Committee on Business & Industry

S. Committee on Judiciary

Hearing Date(s) JAN 28 ✓ C

Hearing Date(s) FEB 11 ✓ C

JAN 31 ✓ C

FEB 17 ✓ C

_____ C

_____ C

_____ C

_____ C

Date Out JAN 31 ✓ C

FEB 17 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

STATUS SHEET

BUSINESS & INDUSTRY COMMITTEE

48 Legislature

Bill No.	Subject matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 420	Revise laws relating to campgrounds & trailer courts	1-20	Dozier	1-26	Do Pass	1-26
HB 452	To license persons operating truthfulness instruments	1-24	Daily	1-28	Do Pass Amended	1-31
HB 464	To authorize life insurance companies to establish separate accounts for variable life insurance policies	1-24	Hemstad	1-31	Do Pass	1-31
HB 465	To generally revise and clarify the laws relating to insurance	1-24	Hemstad	1-31	Do Pass Amended	1-31

HOUSE BUSINESS AND INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on January 28, 1983, at 9:00 a.m. in Room 420 of the Capitol Building, Helena, Montana. All members were present except Rep. Fagg.

HOUSE BILL 452

REP. FRED DAILY, District 87, sponsor, opened by saying this bill does two main things - regulates the use of lie detection devices and licenses operators. This would be done through the Department of Commerce instead of through a new board. There are only 22 polygraph examiners in Montana and that does not constitute enough for the creation of a new board.

PROPOSERS:

BOB GRAHAM, President, Montana Association of Polygraph Examiners, and employed with the Sheriff's Office in Butte, stated that this is the second time they have tried to get this legislation through the Legislature. At the present time nothing controls the polygraph industry in Montana. They do have an association of 22 members. He stated there were out-of-state polygraph examiners practicing in Montana who don't meet the regulations their organization has in effect. This bill will protect the Montana citizen by insuring they are getting the best professionals in the field. The criminal polygraph test is used mostly in this state and they want some way for the state to regulate this industry. There is nothing from stopping a person who reads a few books to claim he is qualified.

ART WEAVER, Burger King manager in Great Falls, said he used to be manager of a bank in North Dakota and the polygraph test was the only thing that could exonerate his credit record. It saved him from always being called a liar. He recommended everyone should watch F. Lee Bailey's television show for information on polygraphs.

JOHN SCULLY, Sheriff's and Peace Officer's Association, said the issue here is that it takes a competent, trained individual to operate the polygraph in a competent manner. He thinks the state should license the operators to prevent the abuse it can be put to.

BILL WARE, Montana Chiefs of Police Association and Police Chief of the Helena Police Department, said he supported Mr. Scully's remarks and they support this bill.

REP. DAILY, in closing, said of the 22 members in the MAPE, 20 are police officers. This bill does not require the court to accept a polygraph examination as evidence, it simply licenses polygraph examiners.

JANUARY 28, 1983

Page 2

Business & Industry Committee

QUESTIONS:

REP. ELLERD: Will licensing stop anyone from practicing polygraph?

Mr. Scully: Most people who are polygraph examiners are people who have been involved in law enforcement one way or another.

REP. SAUNDERS: Do you know of any instances where this polygraph has been abused. Mr. Scully: Yes. Rep. Saunders: Were they given by people who were qualified to do so? Mr. Scully: Some examiners have caused problems with law enforcement.

REP. ELLISON: What is the status of lie detectors in this state. Are they admissible in court? Mr. Scully: The general rule is that lie detectors are not available in the system to prove guilt or innocence, it's available to use as a tool of investigation.

REP. ELLISON: If we license them doesn't that mean we are going to have to make up our minds as to whether to use them?

Mr. Graham: Polygraph evidence is admissible in court if you enter into a stipulation with your attorney and the prosecuting attorney that it be entered as evidence. We don't have any cases in Montana where a stipulation has been entered into but it has happened in the nation. It is not the accuracy of the polygraph that is in question any more, it's the disproportionate amount of influence it has within the judicial system.

REP. SCHULTZ: Are you going to grandfather all your people without any examination? Mr. Graham: Every member we have in our association is a graduate of the institute and is qualified.

REP. HANSEN: Do you think being licensed will increase your credibility? Chuck O'Reilly, Sheriff, Lewis & Clark County: You are not licensing the machine...you are licensing the individual. All the machine does is measure blood pressure. It's the training on how to prepare the questions and how they react to the questions that involves training.

REP. FABREGA: Will there be a license fee? Rep. Daily: The Department of Commerce will set up a fee in accordance with what it will cost them to license. Mary Lou Garrett, Department of Commerce: I prepared the fiscal note on this bill and I have determined it will cost \$150 per license.

REP. FABREGA: Won't licensing the operator give him a better standing in the courts? Mr. Scully: No. You have to separate licensing the ability of a qualified person from the issue of credibility in court. We do have instances where polygraph examinations were introduced as evidence and the court dismissed the case. Rep.

Fabrega: What happens if a person wants to use his test in court?

Mr. Scully: We'd have to look at what were the questions asked, and under what circumstances, where it took place, etc.

REP. HARPER: This grandfather clause has no date on it - it is on-going. Would you have a problem with all these people taking the test? Pat Fleming, Deputy County Attorney, Silver Bow County: It will give them six months to apply and then they would have to satisfy the other requirements. Rep. Harper: Why can't everyone be required to take the examination? Mr. Fleming: They may not oppose everyone taking this test. We are talking about waiving it for the 22 in Montana. The idea was that if you have 6 to 8 years

JANUARY 28, 1983

Page 3

Business & Industry Committee

of experience, it would only be fair to grandfather them in. REP. HARPER: After a license expires, you have two years to renew it. What is the state of the art and how in fact does it move and are we giving people a period of time that is just unreasonable? Mr. Graham: After you have practiced polygraphy it is not that difficult to pick it up again. Examiners must attend seminars within a year period or a two year period. If he doesn't meet that standard, his credibility is questioned.

REP. ELLERD: Would this prohibit a licensed examiner from another state but not in Montana from practicing here? Mr. Scully: He would have to apply for a license. Mr. Graham: If this bill passes, we will immediately notify the American Polygraph Association and let them know that we have a licensing law. They are going to know that before they come into Montana. This is going to attract out of state examiners because they want to be licensed.

REP. BACHINI: How many other states have licensing now?

Mr. Graham: 23 states have licensing laws.

REP. WALLIN: Are there any courts that refuse to permit this in court? Mr. Graham: The mention of polygraph in a court is grounds for appeal.

REP. METCALF: The Department of Commerce did not decide for or against this bill. Do you think the Department would be able to enforce this bill or will it require a FTE to take care of it? Ms. Garrett: It will take a .03 FTE. It wouldn't take much time and we can administer it for about \$2,500 - \$3,000 a year, if that.

EXECUTIVE SESSION:

REP. PAVLOVICH moved that HOUSE BILL 452 DO PASS.

REP. ELLERD: Does it read that any out of state examiner must have a Montana license or that he has to have a license in another state? Rep. Metcalf: He must have a license in Montana.

REP. HARPER: If the bill passes the way it is now, every person is going to get an application into Montana immediately so that he doesn't have to take the test.

REP. BACHINI: Does the Department have a person to test these people? Rep. Metcalf: They are going to have to establish the test and everything else. REP. FABREGA: Generally, these tests are somewhat developed by the association, like the Board of Realtors.

REP. PAVLOVICH: They are all required to go to a school to learn this skill and I imagine the Department of Commerce could go to that school and get their requirements and have these 22 people take the test. (general agreement)

REP. FABREGA: The one benefit of this bill to license examiners will be to set a standard and it will eliminate quacks. The intent is that anyone who is not licensed in this state has to show that he has taken a test in another state. Everyone in Montana will have to take the test.

REP. KADAS: Do we want to limit it to law enforcement people only?

JANUARY 28, 1983

Page 4

Business & Industry Committee

REP. METCALF: I think a psychologist would make an excellent examiner.

REP. HARPER: An examiner has to be 18 years old with 5 years experience...

REP. NISBET: Are they going to be operating illegally until they take the test? Rep. Harper: As part of my amendments, I will move to strike the effective date until October 1 to get things in order and adopt the rules.

REP. HARPER: I move the amendments we have worked out here today.

Question: Motion carried unanimously.

Paul Verdon was asked to put in the proper language and bring a reading copy of HB 452 back to committee. (Amendments Exhibit #1)

HOUSE BILL 213

REP. HANSEN moved that HOUSE BILL 213 DO PASS AS AMENDED.

REP. FABREGA: I think the title would read more clearly if we added "the existence of a controlling interest in the condominium project", and I so move. Question: Carried unanimously.

Question: The motion that HOUSE BILL 213 DO PASS AS AMENDED carried unanimously.

The hearing adjourned at 11:15 a.m.



JERRY METCALF, CHAIRMAN



Linda Palmer, Secretary

1 HOUSE BILL NO. 452

2 INTRODUCED BY DAILY, QUILICI, PAVLOVICH, D. BROWN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT LICENSING AND
5 REGULATING PERSONS WHO PURPORT TO BE ABLE TO DETECT
6 DECEPTION, VERIFY TRUTHFULNESS, OR PROVIDE A DIAGNOSTIC
7 OPINION OF DECEPTION OR TRUTHFULNESS THROUGH THE USE OF ANY
8 DEVICE OR INSTRUMENT CAPABLE OF MEASURING OR RECORDING
9 BODILY RESPONSES OR PSYCHOPHYSIOLOGICAL ACTIVITIES;
10 PROVIDING LICENSING QUALIFICATIONS; PROVIDING FOR REVOCATION
11 AND SUSPENSION OF LICENSES; RENEWAL OF REQUIRING CONTINUING EDUCATION
12 FOR LICENSES; GRANTING RULEMAKING AUTHORITY TO THE
13 DEPARTMENT OF COMMERCE; AND PROVIDING PENALTIES;—AND
14 PROVIDING-AN-IMMEDIATE-EFFECTIVE-DATE."
15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Definitions. In [sections 1 through 14],
18 unless the context clearly indicates otherwise, the
19 following definitions apply:

20 (1) "Department" means the department of commerce
21 provided for in Title 2, chapter 15, part 18.

22 (2) "Examinee" means an individual who is being
23 examined, tested, or questioned by an examiner for the
24 purpose of detecting deception or verifying truthfulness.

25 (3) "Examiner" means any person who:

(a) purports to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument;

(b) represents that he can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument; or

(c) uses a mechanical device or instrument to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding deception or truthfulness.

Section 2. Minimum standards for instruments or devices. (1) No person may use or attempt to use any instrument or device for the purpose of detecting deception, verifying truthfulness, or assisting in the reporting of a diagnostic opinion as to deception or truthfulness unless the instrument or device, at a minimum, is capable of visually, permanently, and simultaneously recording indications of an examinee's:

(a) cardiovascular pattern;

(b) respiratory pattern; and

(c) galvanic skin response pattern.

1 (2) Indications of other psychophysiological changes
2 or bodily responses may also be recorded in addition to the
3 minimum standards provided in subsection (1).

4 (3) The operation, use, or attempted use by an
5 examiner of an instrument or device that does not meet the
6 minimum requirements provided in subsection (1) is subject
7 to the penalties provided in [section 14].

8 Section 3. Powers and duties of department. The
9 department shall:

10 (1) administer and enforce the provisions of this
11 chapter;

12 (2) adopt rules in accordance with the Montana
13 Administrative Procedure Act to carry out the provisions of
14 ~~[sections 5, 7 through 10, and 13 THIS ACT]~~; and

15 (3) investigate all complaints concerning violations
16 of [sections 1 through 14] unless the department determines
17 that any such complaint is frivolous or otherwise lacking in
18 merit.

19 Section 4. License required. No person may, unless
20 licensed under the provisions of [sections 1 through 14]:

21 (1) hold himself out to be an examiner;

22 (2) use or attempt to use any mechanical device or
23 instrument for the purpose of detecting deception, verifying
24 truthfulness, or reporting a diagnostic opinion regarding
25 deception or truthfulness;

(3) purport to detect deception or verify truthfulness through mechanical devices or instruments; or

(4) advertise or represent that he can or does offer the service of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding an individual's deception or truthfulness through mechanical devices or instruments.

Section 5. Issuance of examiner's license without examination -- reciprocity. (1) Upon application to the department ~~within 6 months after [the effective date of this act]~~ and payment of the required license fee, a person must be issued an examiner's license ~~without examination~~ if he has satisfied the department by affidavit or otherwise that he:

(a) has actually engaged in the occupation, profession, or practice as an examiner for at least 1 year before applying under this subsection and, during that period, has used instruments that satisfy the standards of [section 2]; and

(b) meets the minimum requirements for licensing provided in [section 6(1)-through-(5)].

(2) Except as provided in subsection (3), an applicant licensed as a polygraph examiner in another state must, upon application to the department and payment of the required license fee, be issued an examiner's license without

1 examination if he satisfies the department by affidavit or
2 otherwise that he:

3 (a) has legally administered polygraph examinations in
4 the state in which he is licensed for at least 1 year before
5 making application under this subsection; and

6 (b) meets the requirements for licensing set forth in
7 [section 6].

8 (3) No license may be issued without examination under
9 subsection (2) unless the state in which the applicant is
10 licensed has and maintains licensing requirements
11 substantially equivalent to those provided in [sections 1
12 through 14] and grants reciprocity to examiners licensed in
13 Montana under terms similar to those provided in this
14 section.

15 Section 6. Issuance of examiner's license with
16 examination. Upon application and payment of the required
17 fee, an applicant must be granted a license as an examiner
18 if he:

- 19 (1) is at least 18 years old;
- 20 (2) is a citizen of the United States;
- 21 (3) is of good moral character;
- 22 (4) has successfully completed a course in polygraph
23 instruction at an American polygraph association accredited
24 institution;
- 25 (5) has a high school diploma from an accredited high

1 school or its equivalent and ~~at least 5 years of continuous~~
 2 ~~investigative experience with a recognized law enforcement~~
 3 ~~or governmental investigative agency; and~~

4 (6) has successfully passed an examination conducted
 5 by the department that tests the applicant's general
 6 knowledge of the use of the polygraph OR A COMPARABLE
 7 EXAMINATION CONDUCTED BY ANOTHER STATE WHOSE LAW REQUIRES
 8 SUCCESSFUL COMPLETION OF THE EXAMINATION AS QUALIFICATION
 9 FOR A LICENSE.

10 Section 7. Fees. (1) The department shall adopt and
 11 charge nonrefundable application, license, and license
 12 renewal fees, commensurate with costs in accordance with
 13 37-1-134.

14 (2) All fees collected by the department under this
 15 section must be deposited in the earmarked revenue fund for
 16 the use of the department in administering [sections 1
 17 through 14].

18 THERE IS A NEW MCA SECTION THAT READS:

19 Section 8. Continuing education. The department shall
 20 establish by rule minimum requirements of professional
 21 education and training, consistent with field of learning
 22 and with the standards of professional organizations, for
 23 renewal of licenses.

24 Section 9. Terms of license — renewal. (1) An
 25 examiner's license is issued for 1 year or such portion as

1 remains at the time of issuance and may be renewed, if it
2 has not been revoked or suspended, on or before the date of
3 expiration of the license. A license that is not renewed
4 expires at midnight on the date set by the department.

5 (2) An examiner whose license has expired may at any
6 time within 2 years after the expiration date obtain a
7 renewal license without examination upon payment of a
8 renewal fee to the department. An examiner whose license
9 expired while he was on active duty in the armed forces of
10 the United States or the national guard may, notwithstanding
11 the provisions of 10-1-605, renew his license without
12 examination within 2 years after discharge from service.

13 Section 10. Form of license -- display of license. (1)
14 A license issued under the provisions of [sections 1 through
15 14] must be in the form determined by the department and
16 must include:

- 17 (a) the name of the examiner;
18 (b) the name under which the examiner is to operate;
19 and
20 (c) the number of the license and the date on which
21 the license was issued.

22 (2) The license must at all times be posted in a
23 conspicuous place in the principal place of business of the
24 examiner.

25 Section 11. Pocket card. Upon the issuance of a

1 license, a pocket card of such size, design, and content as
2 determined by the department must be issued without charge
3 to the examiner, which card is evidence that the examiner is
4 duly licensed.

5 Section 12. Admissibility of results as evidence.
6 Nothing in [sections 1 through 14] permits the results of a
7 polygraph examination or other test given by an examiner to
8 be introduced or admitted as evidence in a court of law.

9 Section 13. Suspension and revocation. An examiner's
10 license may be suspended for a fixed period or may be
11 revoked if, after a hearing before the department, it has
12 been determined by competent evidence that the examiner:

13 (1) has obtained the license by fraudulent
14 representation;

15 (2) employs misrepresentation, false promises, or
16 misleading advertising for the purpose of directly or
17 indirectly obtaining business;

18 (3) is incompetent for any reason to act as an
19 examiner;

20 (4) has allowed his license to be used by an
21 unlicensed person;

22 (5) has violated the provisions of [sections 1 through
23 14] or any rule adopted by the department;

24 (6) has willfully or negligently aided or abetted
25 another examiner in violating the provisions of [sections 1

through 14] or any rule adopted by the department;

(7) has failed to provide, within a reasonable amount of time, information requested by the department relating to a formal complaint filed with the department involving the examiner;

(8) has been adjudicated by a decree of court to be seriously mentally ill;

(9) has failed to inform the examinee of all specific question areas to be explored before questions are actually asked during an examination;

(10) has conducted an examination without having informed the examinee that:

(a) he has the right to refuse to participate in the examination;

(b) he has the right to halt the examination in progress at any time;

(c) he is not required to answer any questions or give any information; and

(d) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise agreed to in writing; or

(11) has failed to inform the examinee of the results of an examination if requested.

Section 14. Hearing. Before refusing an application or suspending or revoking a license, the department shall

1 notify the applicant or examiner by mail not less than 30
2 days before taking any action. The notice must advise the
3 applicant of the intended action and must include a
4 statement that the applicant or examiner may request a
5 hearing within 20 days of receipt of the notice. If the
6 applicant or examiner requests a hearing within that period,
7 a hearing must be granted, and contested case provisions of
8 the Montana Administrative Procedure Act apply to the
9 hearing. An applicant or examiner who is aggrieved by a
10 final decision in a contested case is entitled to judicial
11 review under the Montana Administrative Procedure Act.

12 Section 15. Penalty. Any person who violates any of
13 the provisions of [sections 1 through 14] is guilty of a
14 misdemeanor and is punishable by a fine of not more than
15 \$500 or by imprisonment in the county jail for a period not
16 to exceed 6 months or both such fine and imprisonment.

17 ~~Section 15. Effective date. This act is effective on~~
18 ~~passage and approval.~~

19 Section 16. Codification instruction. Sections 1
20 through 14 are intended to be codified as an integral part
21 of Title 37, and the provisions of Title 37, chapter 1,
22 apply to sections 1 through 14, except that nothing
23 contained in Title 37, chapter 1, grants additional
24 rulemaking authority to the department for the purpose of
25 administering this act.

-End-

VISITORS' REGISTER

HOUSE

$$B + I$$

COMMITTEE

BILL

HB 452

Date

1/28/83

SPONSOR

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Robert Steamer	1017 2nd St. Seattle	self		
Chuck O'Reilly	Helena	Mt. Stuffs & Lumber Co.		
William L. Hale	Helena	Mt. Chiefs of Police Assn.		
John Sully	Bozeman	Mont. State Police		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

JANUARY 31, 1983

Page 4

Business & Industry Committee

HOUSE BILL 465

REP. FABREGA moved the amendments on title, line 9 to strike 3/4 of 1% and insert 2 3/4%. Question: Carried unanimously.

REP. HARPER: On page 12 there is a problem. Every agency except the ones deleted out by MAPA must follow the requirements listed. Under this section, they say that one person can receive a hearing. Ten days cuts the requirement of MAPA in half. If they were given only 10 days notice in advance of a hearing, I think any decisions the commissioner makes could be deemed void. I would ask Jayne Mitchell to look at that and give us a recommendation.

HOUSE BILL 452

REP. ELLERD made the motion that HOUSE BILL 452 DO PASS AS AMENDED.

REP. METCALF: We eliminated the grandfather clause and added if out-of-state examiners come in they need to show equivalent licensure to purchase a license in Montana.

REP. HARPER: On page 4, line 15 - sub A, one of the requirements is that you engage in the occupation for at least 1 year. How can you do that without a license? I suggest we amend that.

REP. ELLERD: Is there any reason they should have a high school diploma? Rep. Metcalf: Yes.

Question:

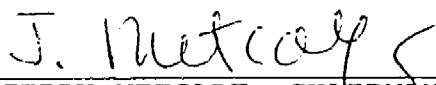
The motion that HOUSE BILL 452 DO PASS AS AMENDED carried unanimously.

REP. KITSELMAN made the motion that the Statement of Intent do pass. Motion carried unanimously.

HOUSE BILL 147

REP. METCALF: The Senate now has HB 147 in a sub-committee and they would like the House to appoint a sub-committee to iron out the problems together. I will appoint Rep. Harper, Chairman, Rep. Nisbet and Rep. Kitselman to serve on that committee.

The hearing adjourned at 10:15 a.m.



REP. JERRY METCALF, CHAIRMAN



Linda Palmer, Secretary

STANDING COMMITTEE REPORT

January 31

83

19

MR. **SPEAKER:**

We, your committee on **BUSINESS & INDUSTRY**

having had under consideration **HOUSE** Bill No. **452**

first reading copy (**white**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT LICENSING AND REGULATING PERSONS WHO PURPORT TO BE ABLE TO DETECT DECEPTION, VERIFY TRUTHFULNESS, OR PROVIDE A DIAGNOSTIC OPINION OF DECEPTION OR TRUTHFULNESS THROUGH THE USE OF ANY DEVICE OR INSTRUMENT CAPABLE OF MEASURING OR RECORDING BODILY RESPONSES OR PSYCHOPHYSIOLOGICAL ACTIVITIES; PROVIDING LICENSING QUALIFICATIONS; PROVIDING FOR REVOCATION AND SUSPENSION OF LICENSES; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT OF COMMERCE; PROVIDING PENALTIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That **HOUSE** Bill No. **452**

BE AMENDED AS FOLLOWS:

1. Title, line 11
Following: "LICENSES;"
Insert: "REQUIRING CONTINUING EDUCATION FOR RENEWAL OF LICENSES;"
2. Title, line 12
Following: "COMMERCE;"
Insert "AND"
3. Title, line 12
Following: "PENALTIES"
Strike: Remainder of line 12 and line 13 through "DATE"
4. Page 1, line 16
Following: "through"
Strike: "14"
Insert: "15"

XXXXXX
60 PAGE XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

- Page 3, line 6
Following: "section"
Strike: "14"
Insert: "15"
6. Page 3, line 13
Following: "["
Strike: all language and punctuation through "13"
Insert: "this act"
7. Page 3, line 15
Following: "through"
Strike: "14"
Insert: "15"
8. Page 4, line 7
Strike: "without"
9. Page 4, line 8
Strike: "examination"
10. Page 4, line 9 and 10
Following: "department"
Strike: remainder of line 9 through "act]" on line 10
11. Page 4, line 11
Following: "license"
Strike: "without examination"
12. Page 4, line 13
Following: "he"
Strike: remainder of line 13 and lines 14 through 19 in
their entirety through "(b)" on line 19
13. Page 4, line 20
Following: "6"
Strike: "(1) through (5)"
14. Page 5, line 25
Following: "equivalent"
Strike: remainder of the line and through "agency" on line 2
on page 6
15. Page 6, line 5
Following: "polygraph"
Insert: "or a comparable examination conducted by another
state whose law requires successful completion of the
examination as qualification for a license"
16. Page 6, line 13
Following: "through"
Strike: "14"
Insert: "15"

January 31..... 1993.....

17. Page 6, following line 13

Insert: "Section 8. Continuing education. The department shall establish by rule minimum requirements of professional education and training, consistent with field of learning and with the standards of professional organizations, for renewal of licenses."

Renumber: subsequent sections

18. Page 8, line 13

~~Reinserting xxxxxxxxxx~~

Strike: "14"

Insert: "15"

19. Page 8, line 16

Following: "through"

Strike: "14"

Insert: "15"

20. Page 10, line 3

Following: "through"

Strike: "14"

Insert: "15"

21. Page 10, lines 7 and 8

Strike: Section 15 in its entirety

Renumber: subsequent section

22. Page 10, line 10

Following: "through"

Strike: "14"

Insert: "15"

23. Page 10, line 12

Following: "through"

Strike: "14"

Insert: "15"

AND AS AMENDED

DO PASS

MR. SPEAKER:

WE YOUR COMMITTEE ON BUSINESS AND INDUSTRY, HAVING HAD UNDER CONSIDERATION HOUSE BILL NO. 452, FIRST READING COPY WHITE, ATTACH THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT
HOUSE BILL 452

A statement of intent is required for this bill because section 3 grants rulemaking authority to the Department of Commerce.

It is the legislature's intent that the department shall adopt rules setting forth the manner in which an applicant must prove his fitness for licensure and adopt rules specifying the fees authorized by section 7. The department must also adopt rules establishing the date of expiration of all licenses; it is contemplated that these rules will establish a different numerical grouping so that all licenses do not expire on one date. The department shall also adopt rules specifying the form of the license and pocket card. The department shall also adopt, under section 8, rules for continuing education of examiners. The department may, under section 3 and 15, adopt any or all parts of the Attorney General's Model Rules which satisfy the requirements of section 15. It is the legislature's intent that no other rules than those required by section 15 and as may otherwise be authorized by the Administrative Procedure Act, be adopted by the department to implement this act.

*

COMMITTEE ON Senate Judiciary

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO NOT <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
415	2-8-83	3-22-83	3-22-83					3-22-83	
416	3-2-83	3-22-83	3-22-83						3-22-83
424	2-15-83		REFERRED TO STATE ADMINISTRATION						
427	2-15-83		REFERRED TO STATE ADMINISTRATION						
429	2-9-83	3-11-83	3-11-83					3-11-83	
433	2-9-83	3-3-83	3-3-83				3-3-83		
438	3-2-83	3-18-83	TABLED						
452	2-7-83	2-11-83	2-17-83					2-17-83	
467	2-21-83	3-18-83	3-19-83				3-19-83		
481	2-9-83	3-3-83	3-3-83				3-3-83		
489	2-17-83	3-14-83	3-14-83				3-14-83		
501	2-18-83	3-15-83	3-15-83				3-15-83		
502	2-10-83	3-8-83	3-8-83				3-8-83		
505	3-1-83	3-14-83	3-14-83				3-14-83		
507	2-15-83	3-11-83	3-11-83					3-11-83	
512	2-11-83	3-7-83	TABLED						

(Use Separate Sheet for Senate, House Bills, and Resolutions)

CONSIDERATION OF HOUSE BILL 323: Representative Veleber, sponsor, advised that this bill is being introduced to require incumbant municipal and city court judges to be subjected to voter approval when there is no*opponent running for their office.

There being no proponents or opponents, the hearing was opened to questions from the Committee.

Senator Mazurek inquired if all municipal court judges are now elected. He was advised that they are. Senator Berg questioned what would happen if the voters did not approve the incumbant judge. He was informed that the city council would then appoint someone to fill the position.

There being no further discussion, the hearing was closed.

CONSIDERATION OF HOUSE BILL 452: Representative Daily advised that this bill was being introduced to require a polygraph examiner to be licensed and to put the licensing procedure under the Department of Commerce. He also advised the Committee of the changes adopted by the House before this bill was referred to the Senate.

PROPOSERS: Bob Graham, a detective with the Sheriff's Office in Butte, supported the bill. There is a need to add a degree of professionalism to examiners and to prevent unqualified examiners from practicing in the state. He advised that the major use of polygraphs was in the area of criminal investigation.

John Scully, representing the Montana Sheriff and Peace Officer's Association, supported HB452 and informed the Committee that the lie detector is a "great" tool to law enforcement. He stated that it is not used as a tool of truth in the courtroom, but it does serve a useful purpose. There is a need to license polygraph examiners so as to maintain quality and professionalism.

Dick Kane, Administrator for the Department of Labor and Industry, Labor Standards Division, advised that he was neither for or against this bill. He then distributed proposed amendments (Exhibit "C") and said there is a need to prevent examiners from being licensed on the basis of reciprocity. He also felt it was essential for the polygraph examiner to be required to notify the examinee, in writing, that the test cannot be used for employment purposes.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Senate Judiciary Committee
February 11, 1983
Page 3

Senator Daniels inquired as to how many examiners there are in the state who are employed by law enforcement. He was advised that there are 22 examiners, 20 of which are employed by a law enforcement agency.

Senator Mazurek brought up the subject of admissibility and questioned if lie detector tests are now admissible in court. John Scully advised him that they are not. He then reiterated the need for licensing so as to avoid abuses by unqualified examiners.

Chuck O'Reilly, Sheriff of Lewis and Clark County, advised that there are now two non-law enforcement polygraph operators in this state and that there are currently no laws to regulate them. He also advised that the Montana Chief of Police Association supports this bill.

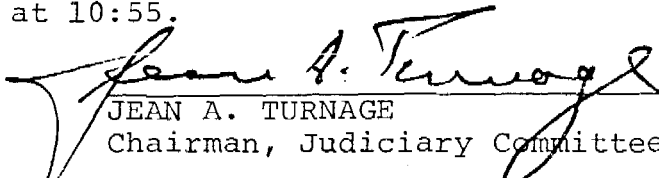
Senator Shaw asked John Scully if he had reviewed the amendments proposed by Dick Kane. John Scully stated he had reviewed them and was of the opinion that they placed an unnecessary burden on the examiner.

Sgt. Ron Cutting of the Gallatin County Sheriff's Office explained the use of the polygraph equipment to the Committee.

Senator Berg questioned if continuing education courses are available to these examiners. Bob Graham advised that there are usually four or five seminars a year and the examiners usually try to attend one of these. Senator Berg asked Bob Graham if he had reviewed the proposed amendments. Bob Graham felt that Dick Kane's concerns that a lie detector test could not be administered for pre-employment purposes is addressed in Section 39-2-304, MCA.

There being no further questions, Representative Daily closed by stating HB452 would not create a new board, but would provide that licensing duties would be handled directly by the Department of Commerce. He also felt the Committee should review the amendments which the Business and Industry Committee inserted on page 3, lines 12 through 14 of the bill.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 10:55.


JEAN A. TURNAGE
Chairman, Judiciary Committee

JUDICIARY COMMITTEE

Date 2-11-83

[illegible]

COMMITTEE

SB 354 + SB 366

VISITORS' REGISTER

DATE 2-11-8-

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

EXHIBIT "C"
February 11, 1983

House Bill 452

Testimony of

Dick Kane

Department of Labor and Industry

Mr. Chairman, members of the committee.

I neither oppose or support H.B. 452 but would like to suggest some amendments to the bill.

As you know, the Labor Standards Division administers a law, 39-2-304, that prohibits the use of polygraph machines or other mechanical forms of lie detector tests as a condition for employment or continuation of employment. These tests are being administered on an increased frequency in Montana.

One problem we have in enforcing the law is that a violation constitutes a misdemeanor. We have to advise the examinee to go to the county attorney and ask that criminal charges be filed against the employer.

Most county attorneys have work loads of criminal cases that carry a much higher priority than those involving lie detectors so very few complaints are processed. We believe that the amendments we are suggesting would address that
problem.

The first amendment would be to Section 5. Section 5 is a reciprocity licensing provision.

"C"
2-11-83

The first amendment is on page 5.

On line 4, delete the word "and".

On page 5, line 6, delete the period, insert the word "and".

Insert the following on line 7.

(c) has not violated the provisions of 39-2-304 or any similar law in any other state or jurisdiction.

Beginning with line 2, page 5, the bill would then read;

(a) has legally administered polygraph examinations in the state in which he is licensed for at least 1 year before making application under this subsection; ~~and~~

(b) meets the requirements for licensing set forth in [Section 6] ~~and~~

(c) has not violated the provisions of 39-2-304 or any similar law in any other state or jurisdiction.

The second amendment would be to Section 12. Section 12 provides for the suspension and revocation of the license.

The second amendment would be on page 9.

On line 11, delete the word "or" insert a new subsection (11) "has failed to notify the examinee in writing, of the provisions of 39-2-304; or"

"C"
2-11-83

On line 12, change (11) to (12).

On line 13, delete the period and add the word "or".
Insert a subsection (13) that reads "has administered a test that is prohibited by 39-2-304 or by a similar law in any other state or jurisdiction".

Beginning with line 9, page 9, the amended bill would read;

(d) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise agreed to in writing; ~~-or-~~

(11) has failed to notify the examinee in writing of the provisions of 39-3-304; or

(12) has failed to notify the examinee of the results of an examination if requested; or

(13) has administered a test that is prohibited by 39-2-304 or by a similar law in any other state or jurisdiction.

NAME: DICK KANE DATE: FEB 11, 81

ADDRESS: HELENA

PHONE: 449-5600

REPRESENTING WHOM? DEPT OF LABOR & INDUSTRY
LABOR STANDARDS DIV

APPEARING ON WHICH PROPOSAL: HB-452

DO YOU: SUPPORT? AMEND? ✓ OPPOSE?

COMMENTS: SEE PREPARED STATEMENT

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Senator Berg then moved SB366 DO NOT PASS. This motion carried with Senators Galt, Mazurek, Crippen and Turnage voting in opposition.

ACTION ON SENATE BILL 385: The Committee discussed the need for this bill and how requiring inspection of vehicles for identification numbers would cause additional work and expense for innocent owners. Senator Halligan moved SB385 DO NOT PASS. This motion carried unanimously.

ACTION ON SENATE BILL 388: Counsel distributed amendments and reviewed how the amendment would take the power away from the commission for it to act upon its own motion. Senator Berg moved to adopt the proposed amendment. This motion passed unanimously. Senator Berg then moved SB388 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON HOUSE BILL 327: The Committee agreed that shoplifting is a problem, but felt this was a bad bill. The idea that a merchant could frisk a person in private concerned the Committee. It was the consensus of the Committee that it would take too much work to reword the bill; therefore, Senator Berg moved SB327 BE NOT CONCURRED IN. This motion carried with Senator Crippen voting in opposition.

ACTION ON HOUSE BILL 452: Amendments were distributed that would assure the results of a polygraph test could not be admitted into evidence during the course of a trial. The bill would still provide that a polygraph examiner must be licensed and subject to continuing education. Senator Crippen moved to adopt the proposed amendments. This motion carried unanimously. Senator Crippen then moved that HB452 BE CONCURRED IN AS AMENDED. This motion carried with Senators Shaw, Mazurek, Daniels and Galt voting in opposition.

ACTION ON HOUSE BILL 143: It was the consensus of the Committee that this was not a good bill. Senator Berg moved HB143 BE NOT CONCURRED IN. This motion carried with Senator Hazelbaker voting in opposition.

ACTION ON SENATE BILL 313: Senator Mazurek moved that SB313 BE TAKEN FROM THE TABLE. This motion passed unanimously. The Committee then amended the bill to remove the authority from the arresting officer to revoke or suspend the license and to decrease the period of suspension and revocation. Senator Halligan moved to adopt the amendments. This motion passed unanimously. Senator Halligan then moved SB313 DO PASS AS AMENDED. This motion passed unanimously.

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on Judiciary

House Bill No. 452
having had under consideration

Daily (Crippen)

House Bill No. 452
Respectfully report as follows: That

third reading bill, be amended as follows:

1. Title, line 13.
Following: "COMMERCE;"
Insert: "PROHIBITING THE RESULTS OF A POLYGRAPH EXAMINATION FROM
BEING INTRODUCED OR ADMITTED INTO EVIDENCE;"
2. Page 8, line 5.
Strike: "Admissibility"
Insert: "Inadmissibility"
3. Page 3, line 6.
Strike: "Nothing in [sections 1 through 15] permits the"
4. Page 3, line 8.
Strike: "to"
Insert: "may not"

And, as so amended,

~~DOES~~ BE CONCURRED IN